

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 11, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

GL No. S-3849

Hawaii

Amendment of General Lease No. S-3849 to the United States of America for the Pohakuloa Training Area, Kaohe, Hamakua and Puuanahulu, North Kona, Island of Hawaii, Tax Map Key: 3rd/ 4-4-15:08; 4-4-16:05; and 7-1-4:07

APPLICANT:

United States of America, by and through its Department of the Army, whose business and mailing address in Hawaii is U.S. Army Corps of Engineers, Honolulu District, Fort Shafter, Hawaii 96858-5440.

LEGAL REFERENCE:

Sections 171-13 and 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Pohakuloa Training Area, Kaohe, Hamakua and Puuanahulu, North Kona, Island of Hawaii, identified by Tax Map Key: 3rd/ 4-4-15:08; 4-4-16:05; and 7-1-4:07, as shown on the attached maps labeled Exhibits A-1, A-2 and A-3.

AREA:

22,971 acres, more or less.

ZONING:

State Land Use District:	Conservation, Resource Subzone
County of Hawaii CZO:	Not applicable

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Encumbered by General Lease No. S-3849 to the United States of America.

CHARACTER OF USE:

Military purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Impact Statement (FEIS) for the Saddle Road realignment project was announced in the Federal Register on September 3, 1999 and in Hawaii's Office of Environmental Quality Control's Environmental Notice on September 8, 1999. A Record of Decision finalized on October 30, 1999 presented the selection of the recommended alternatives by the agencies and formalized the mitigation commitments. The governor accepted the EIS on November 12, 1999.

After a contested case hearing, on September 28, 2001 the Board of Land and Natural Resources granted the United States Department of Transportation Conservation District Use Permit No. HA-2969 for the subdivision of the new Saddle Road right-of-way and construction of the Saddle Road improvements, subject to various terms and conditions.

The existence and use of the old Saddle Road through PTA predates the creation and regulation of land uses within the State conservation districts in 1964. Therefore, the present and future use of the subject land as a road is "grand-fathered" and not subject to the filing of a separate conservation district use application (CDUA). However, as discussed below, a CDUA may have to be filed for any subdivision resulting from the granting of Applicant's request.

DCCA VERIFICATION:

Not applicable. The United States of America is not required to register with the Department of Commerce and Consumer Affairs.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide amended survey maps and property descriptions according to State DAGS standards and at Applicant's own cost;
- 2) Obtain a quitclaim deed from the County of Hawaii to the Board of Land and Natural Resources, State of Hawaii, covering the old Saddle Road right-of-way between mileposts 30.1 through 41.4;
- 3) Obtain written concurrence of the State of Hawaii Department of Transportation to the inclusion of the old Saddle Road right-of-way between mileposts 30.1 through 41.4 as part of the premises leased to Applicant under General Lease No. S-3849;
- 4) Obtain Department Permit or Land Board Permit, as applicable, for any subdivision or consolidation and re-subdivision of conservation lands resulting from the inclusion of the old Saddle Road in the lease premises under General Lease No. S-3849;
- 5) Install a locked gate across the old Saddle Road on the lease premises at the eastern boundary of PTA to keep the public from accessing PTA from the old Saddle Road alignment within the Mauna Loa Forest Reserve; and
- 6) Pay for the cost of the publication of notice of disposition by negotiation pursuant to Hawaii Revised Statutes Section 171-16(c).

REMARKS:

Saddle Road was originally constructed by the United States government in 1942 to facilitate the development of the Department of the Army's Pohakuloa Training Area (PTA). Subsequently, the road evolved into a cross-island arterial highway, a use for which it was ill suited. The old road has narrow lanes, sharp curves, steep grades, poor sight distances, substandard drainage, multiple one-lane bridges, and poor pavement in many areas.

The Saddle Road realignment project is a partnership of Federal and State agencies to upgrade and modernize Saddle Road from its junction with Mamalahoa Highway in South Kohala to milepost 6 in South Hilo, a distance of approximately 48 miles. The purpose of the project is to provide safe and efficient travel between East and West Hawaii. After completion of construction, the State Department of Transportation (DOT) will operate and maintain the new highway. Three phases of the realignment have been completed extending between mileposts 19 and 42.

Pursuant to General Lease No. S-3849 dated August 17, 1964 (a direct negotiation lease),

the United States of America (Applicant) leases approximately 22,971 acres of State lands as part of the PTA. The old Saddle Road alignment traversed the lease premises between old Saddle Road mileposts 30 and 42.4 (approximately). In August 2009, the milepost 34 to 42 segment of the new Saddle Road opened to the public, thereby bypassing most of the old road alignment within PTA. See map attached as Exhibit B (on Exhibits A-2, A-3 and B, the old Saddle Road is highlighted in blue, and the new road is highlighted in yellow).

Under General Lease No. S-3849, the old Saddle Road was specifically excluded from the premises leased to Applicant. By letter dated July 7, 2009, Applicant requested that the old Saddle Road from mileposts 30.1 through 41.4 be included as an internal road within PTA, either by way of an easement in favor of Applicant or a lease amendment incorporating the old road alignment within General Lease No. S-3849. A small segment of the old Saddle Road within the lease premises is still in use as a public highway. This segment is located approximately between mileposts 41.4 and 42.4. See Exhibit B. This segment will continue to be excluded from the lease premises until it is bypassed by future construction of the new road. Also, there is a small segment of Saddle Road near Mauna Kea State Park where the old and new alignments overlap. This area will continue to be excluded from the lease as part of the set-aside to DOT discussed below. The area of the old Saddle Road right-of-way within PTA is approximately 112 acres.

Staff believes an amendment to the lease is the preferable disposition. The amendment can be made by revising the property descriptions in Exhibit A of the lease to indicate that the old Saddle Road right-of-way between mileposts 30.1 and 41.4 is included the lease premises (except where the old road and new road alignments overlap). The maps and descriptions of the lease will also need to be amended to reflect the withdrawal of the new Saddle Road alignment from the lease. At its meeting of December 14, 2001, Item D-36, the Board approved the withdrawal of the new Saddle Road right-of-way from the lease and the set-aside of the right-of-way to DOT. Staff needs as built survey maps of the new Saddle Road in PTA from DOT before finalizing the withdrawal and set-aside.

In light of the fact that the old Saddle Road traverses PTA and the old right-of-way from mileposts 30.1 through 41.4 is no longer required for cross-island traffic purposes, staff believes that the requested use of the old Saddle Road alignment as part of PTA represents the highest and best use of the old road. Land Division has received no competing requests from other agencies for use of the land. The lease rent under General Lease No. S-3849 is \$1.00 for the term of the lease, and staff recommends that road right-of-way be included in the lease on a gratis basis. An immediate management right-of-entry issued to Applicant will allow it to take possession of the old road alignment pending the issuance of the lease amendment.

When the Federal government built Saddle Road during World War II, there was no formal land disposition covering the road. Similarly, there has never been a formal set-

aside or other disposition of the old road right-of-way to the County of Hawaii or to DOT. As a result, there is no executive order that needs to be canceled before the right-of-way can be leased to Applicant.

However, a quitclaim deed from the County of Hawaii to the State covering the old road right-of-way is recommended. Under the Highways statute, Hawaii Revised Statutes, Sections 264-1, et seq., public roads in Hawaii are generally either State highways or county highways. State highways are those under the jurisdiction of DOT, and county highways are all other public highways. An Agreement between DOT and the County of Hawaii dated January 30, 1968 contemplated that jurisdiction over Saddle Road would be transferred from the County to DOT in fiscal year 1971. Staff understands that this transfer did not occur. Pursuant to the Highways statute, fee simple ownership in Saddle Road was deemed to be in the County of Hawaii. Accordingly, a quitclaim deed from the County to the State is in order to clear title in subject road right-of-way. Staff has included requirements above that Applicant secure the necessary quitclaim deed as well as the written concurrence of DOT to Applicant's requested inclusion of the road in General Lease No. S-3849.

The current tax maps for the subject area depict the old road as a separate parcel with its own Tax Map Key number. See Exhibit A-2 (Saddle Road shown as Parcel 14) and Exhibit A-3 (Saddle Road shown as Parcel 12). To the extent the inclusion of the old Saddle Road through PTA as part General Lease No. S-3849 requires subdivision of the old Saddle Road parcels, or the consolidation and re-subdivision of the old Saddle Road parcels with the lease parcels, staff has included a requirement above that Applicant obtain a Department Permit or Land Board Permit, as applicable, for such subdivision or consolidation and re-subdivision. Applicant should contact the Office of Conservation and Coastal Lands for information on the subdivision process.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

By memorandum dated October 6, 2009, staff solicited comments on Applicant's request from the agencies listed below with the following results:

Agency	Comments
State:	
Department of Transportation, Highways Division	No objections.
Forestry and Wildlife (DOFAW)	No objections to Applicant's request. However, DOFAW does not want the section of old Saddle Road east of PTA in the Mauna Loa Forest

	Reserve added to the lease. DOFAW requests that Applicant install a locked gate on the lease premises across the old Saddle Road in the area indicated on Exhibit B to keep the public from accessing PTA.
Office of Conservation and Coastal Lands	No response.
State Parks	No comments.
Historic Preservation	No historic properties will be affected by the project.
Engineering	No objections.
Department of Hawaiian Home Lands	No response.
Office of Hawaiian Affairs	No response.
County of Hawaii:	
Planning Department	The subject area is located within the State Land Use Conservation District. Therefore, the County has no land use jurisdiction over the area. The area is not located in the SMA.
Property Management	No response.
Public Works	No comments.
Police Department	Police Department does not anticipate any significant impact to traffic and/or public safety concerns resulting from proposed action.
Environmental Management	No comments.
Civil Defense	No response.
Federal:	
Department of Transportation	No objections.

In response to the comments received from DOFAW, staff clarifies that Applicant is not seeking to include within the lease premises the section of the old Saddle Road between the eastern boundary of PTA and the eastern junction with the new Saddle Road. Staff has included a requirement above that Applicant install a locked gate across the old Saddle Road on the lease premises in the area indicated on Exhibit B, as requested by DOFAW.

RECOMMENDATION: That the Board:

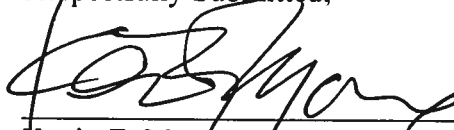
1. In view of the publication of the FEIS for the Saddle Road realignment project, the issuance of CDUP No. HA-2969 for the realignment project, and the use of the old Saddle Road through PTA since approximately 1942, find that a separate environmental assessment is not required for the inclusion of the old Saddle Road right-of-way between mileposts 30.1 through 41.4 as part of the premises of

General Lease No. S-3849.

2. Authorize the Chairperson to request the mayor of the County of Hawaii to initiate the necessary County procedures for approval and issuance of a quitclaim deed covering mileposts 30.1 through 41.4 of the old Saddle Road right-of-way to the Board of Land and Natural Resources, and further authorize the Chairperson to execute the deed on behalf of the Board, subject to the following:
 - A. The standard terms and conditions of the most current quitclaim deed document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Subject to the United States of America fulfilling all of the Applicant requirements listed above, authorize the amendment of General Lease No. S-3849 to include the old Saddle Road right-of-way between mileposts 30.1 through 41.4 as part of the lease premises, to exclude the new Saddle Road right-of-way from the premises, and incorporate amended maps as appropriate, and subject further to the following:
 - A. The standard terms and conditions of the most current amendment of lease document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Authorize the issuance of an immediate management right-of-entry permit to the United States of America covering the subject land under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - B. The right-of-entry shall be effective upon acceptance by Applicant and shall remain in effect until the amendment to General Lease No. S-3849 is finalized and executed; and

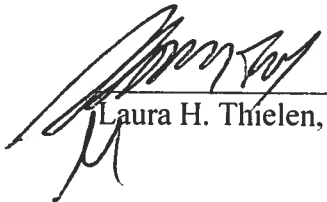
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- 5. Consent to the issuance of an immediate management right-of-entry permit by the County of Hawaii, if required, to the United States of America covering the subject land under the terms and conditions cited above which are by this reference incorporated herein and further subject to the following:
 - A. Such terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

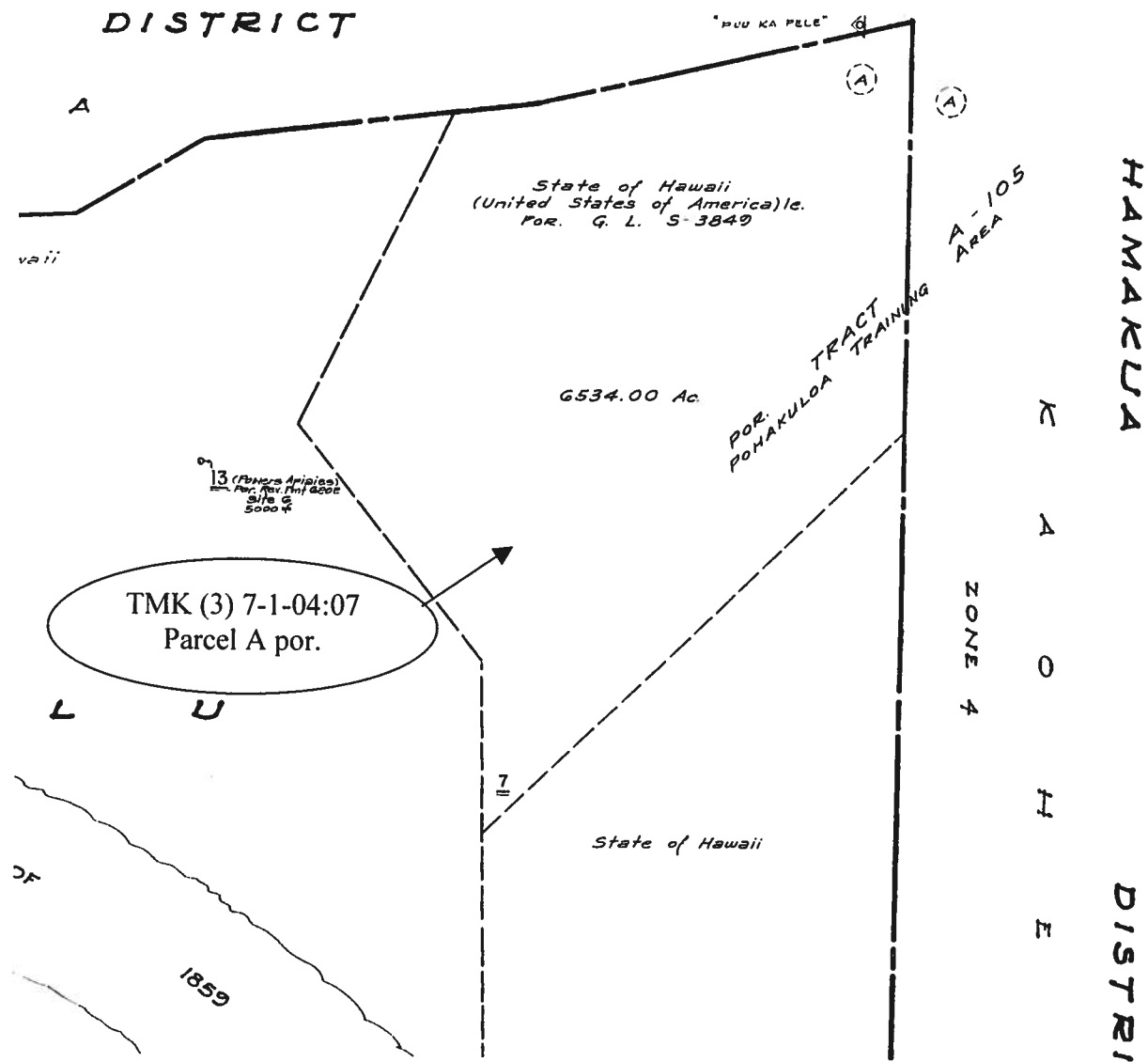


EXHIBIT A-1



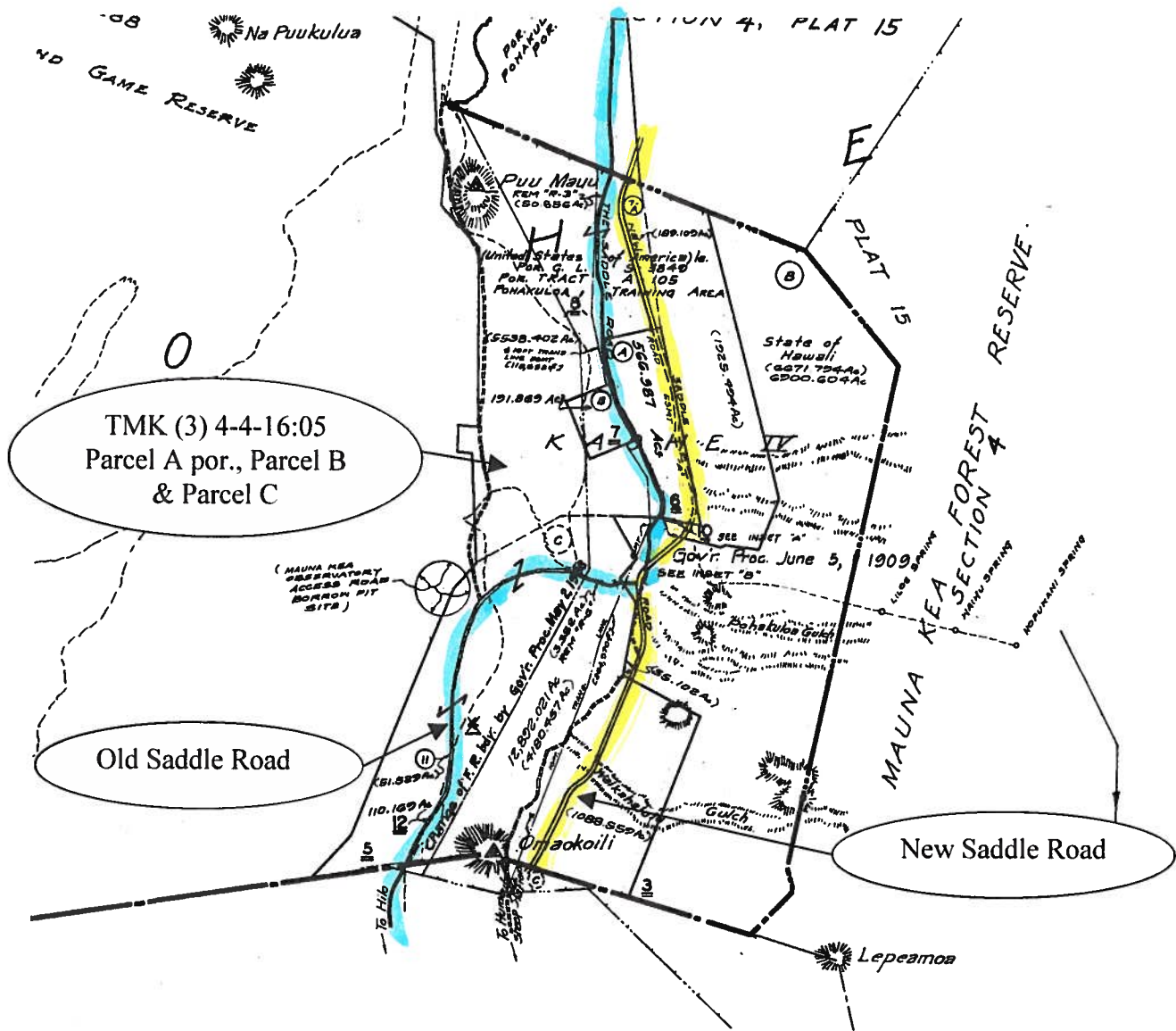


EXHIBIT A-3

